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Attorneys for Defendants:  
Martin Lettunich, Stefan Matan

**IN THE UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

XS Holding B.V., derivatively on behalf of Xslent  
Technologies, LLC and XET Holding Co., LLC,  
and separately on its own behalf

**Case No. C08 02282 (RMW)**

Plaintiff,

v.

COOL EARTH SOLAR, INC., a Delaware  
corporation; ROB LAMKIN, an individual;  
LAWRENCE ASUNCION, an individual;  
SOLAR COMPONENTS LLC, a Delaware  
limited liability company; NATHAN  
SCHULHOF, an individual; M. JAMES  
BULLEN, an individual; MARTIN N.  
LETTUNICH, an individual; STEFAN MATAN,  
an individual; and XSLENT, LLC, a Nevada  
limited liability company and ATIRA  
TECHNOLOGIES, LLC, a Nevada limited  
liability company;

Defendants.

**DECLARATION OF JACQUELINE  
DESOUZA IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS THIS ACTION FOR  
LACK OF DIVERSITY  
JURISDICTION AND FAILURE  
TO NAME INDISPENSABLE  
PARTIES; AND MOTION FOR  
SANCTIONS**  
[Fed.R.Civ.P. rules 11, 12(b)(1),(7).]

Date: July 25, 2008  
Time: 9:00 a.m.  
The Hon. Ronald M. Whyte

I, Jacqueline deSouza, declare as follows:

- I am an attorney licensed to practice before the Courts of this District and of this State. I am employed with Desouza Law Offices, PC, attorneys of record for Defendants Martin Lettunich and Stefan Matan. I make this declaration based on my personal knowledge and upon my role as custodian of the litigation files in this matter. If called as a witness I would and could testify to the statements set forth in this declaration.
- On April 8<sup>th</sup>, and 10<sup>th</sup>, XS Holding B.V. and Brian Caffyn ("XS/Caffyn") sought a temporary restraining order preventing Martin Lettunich, Xslent Technologies, LLC

1 (“XT”) and XET Holding Co, LLC (“XET”) from entering into two proposed business  
2 deals one with Solar Components and the other with Cool Earth. I appeared at hearings  
3 on both days. Those business deals are the same ones that are the subject of claims made  
4 in this federal court action. On or about April 11<sup>th</sup>, after submitting motion papers and  
5 arguing both applications, Paul Riehle (counsel for XS/Caffyn) withdrew the request for a  
6 restraining order as to the Solar Components transaction. Attached hereto and  
7 incorporated herein by reference as **Exhibit A** is a true and correct copy of an email from  
8 Mr. Riehle to all parties and the Court advising that he was withdrawing the Solar  
9 Components temporary restraining order and response from the Court.

10 3. The Court denied XS/Caffyn’s request for a temporary restraining order as to the Cool  
11 Earth transaction and set a hearing date on Mr. Riehle’s application for preliminary  
12 injunction for April 30<sup>th</sup>, when the parties were to argue an earlier application for  
13 preliminary injunction that XS/Caffyn sought. (See, Request for Judicial Notice, Exhibit  
14 K.) At the hearing, Mr. Riehle advised the Court that the denial of his application for a  
15 temporary restraining order had “mooted” his application for preliminary injunction and he  
16 was not seeking to enjoin the Cool Earth transaction. Attached hereto and incorporated  
17 herein by reference as **Exhibit B** are true and correct copy of relevant pages of the  
18 reporter’s transcript from the April 30<sup>th</sup> hearing.)

19 4. On May 20, 2008, I received email notice that Mr. Riehle served a California Code of  
20 Civil Procedure section 170.6 peremptory challenge as to Judge Walsh. Judge Walsh had  
21 been assigned to the state court action for all purposes by stipulation of the parties and  
22 counsel, including XS/Caffyn and Mr. Riehle in November of 2007. Judge Walsh  
23 scheduled a conference call on May 21<sup>st</sup>, in which I participated and objected to the notice  
24 of disqualification. Judge Walsh set Mr. Riehle’s notice for hearing on June 3<sup>rd</sup>.

25 I declare under penalty of perjury, under the Laws of the United States, that the forgoing is true  
26 and correct. Executed in Berkeley, California on May 22, 2008.

27 \_\_\_\_\_/s/\_\_\_\_\_

28 Jacqueline deSouza

## **EXHIBIT A**

**Jacqueline DeSouza**

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**From:** Riehle, Paul [paul.riehle@sdma.com]

**Sent:** Friday, April 11, 2008 8:11 AM

**To:** Riehle, Paul; bwalsh@scscourt.org; lroberts@rehonroberts.com; keb@svlg.com; CA@svlg.com; Frank.Ubhaus@berliner.com; Jacqueline DeSouza; amt@svlg.com; dla@svlg.com; lmcpharlin@mstpartners.com; nalejandro@mstpartners.com; Shang, Jia-Ming

**Subject:** Notice of Withdrawal

To the Court and All Counsel:

Please take notice that Defendants and Cross-Complainant hereby withdraw their TRO application re the proposed Schuloff/Bullen license. This withdrawal is made without prejudice to any and all objections to the proposed license and is made without waiving any rights.

This withdrawal will be confirmed by a pleading filed with the Court.

Very truly yours,

Paul Riehle  
Counsel for Cross-Complainants

-----  
Sent from my BlackBerry Wireless Handheld

**Jacqueline DeSouza**

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**From:** BWalsh@scscourt.org  
**Sent:** Friday, April 11, 2008 8:51 AM  
**To:** Riehle, Paul  
**Cc:** amt@svlg.com; CA@svlg.com; dla@svlg.com; Frank.Ubhaus@berliner.com; Jacqueline DeSouza; Shang, Jia-Ming; keb@svlg.com; lmcpharlin@mstpartners.com; lroberts@rehonroberts.com; nalejandro@mstpartners.com; Riehle, Paul  
**Subject:** Re: Notice of Withdrawal

Thank you for the information, Mr. Riehle.

Judge Walsh

5/21/2008

## **EXHIBIT B**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

BEFORE THE HONORABLE BRIAN C. WALSH, JUDGE

DEPARTMENT NUMBER 9

---oOo---

XET HOLDINGS,

Plaintiff,

vs.

XS HOLDING,

Defendant.

No. 1-07-CV-092388

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AND RELATED CROSS-ACTIONS

**Reporter's Transcript of Proceedings**

Wednesday, April 30, 2008

**APPEARANCES OF COUNSEL:**

For XET, Xslent Technologies, LLC, Xslent, LLC:  
Silicon Valley Law Group  
25 Metro Drive, Suite 600  
San Jose, California 95110  
BY: Kathryn Barrett, Attorney at Law  
Chris Ashworth, Attorney at Law

For Brian Caffyn, XS Holding, BV:  
Sedgwick, Detert, Moran & Arnold  
One Market Plaza, 8th Floor  
San Francisco, California 94105  
BY: Paul Riehle, Attorney at Law

For Martin Lettunich, Stefan Matan, and KORE  
Technologies:  
DeSouza Law Offices  
2397 Shattuck Avenue, Suite 202  
Berkeley, California 94704  
BY: Jacqueline deSouza, Attorney at Law

For Atira Technologies:  
Berliner Cohen  
Ten Almaden Boulevard, Suite 1100  
San Jose, California 95113  
BY: Frank R. Ubhaus, Attorney at Law

Official Reporter: Aura N. Clendenen, RPR, CSR 10080



I N D E X

FOR XS/CAFFYN:	PAGE
<u>WITNESS</u>	
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1 E-mail, I'm not going to make rulings by  
2 e-mail, and if you have objections to documents being  
3 filed, you should make them in the normal course, not by  
4 e-mail.

5 Though we have this sort of unusual  
6 relationship, given that I have this case for single  
7 assignment and I think certain short cause are valuable  
8 to all, we still must remember that ex-parte  
9 communications to the Court are improper.

10 That is to say, that absent the concurrence of  
11 all counsel, nothing should be submitted to me on the  
12 substance of any dispute.

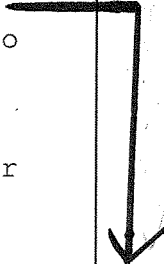
13 To the extent you want to communicate with me  
14 about scheduling, that's permissible. That's an  
15 exception to the ex-parte rule. And I think I've said  
16 among scheduling can be a heads-up, you know, "I  
17 understand people want to come down tomorrow at 8:30 on  
18 this issue." I don't think that's improper.

19 Editorializing on the issue would be.

20 Now, it may come to pass as with the recent  
21 e-mail exchange that there is some confusion over what  
22 we're hearing. But, again, I think you ought to share  
23 that confusion with each other and try to straighten it  
24 out, and only if there's agreement, send it to me.

25 So which brings me to today's to-do list as to  
26 the substance.

27 If I understand correctly, the application for  
28 OSC re license agreement has been withdrawn. I think



1 before us today is, among other things, the order to  
2 shorten cause why a preliminary injunction should not  
3 issue to enjoin XET Holding and Martin Lettunich from  
4 entering into the agreement of terms of option agreement  
5 and a convertible promissory note and guarantee.

6 But I'm not sure if that's still before us or  
7 it's been modified slightly.

8 And then also before us is an OSC re XS and  
9 Caffyn's application for a preliminary injunction which  
10 had been scheduled for hearing April 2nd which  
11 Mr. Ashworth has characterized as the redo. I'm not in  
12 any way accepting that characterization, but if I can  
13 borrow it, it keeps me clearer on what we're doing.

14 And in support of that, Mr. Riehle has  
15 submitted his response to the financial reconciliation  
16 and a request for pretrial accounting.

17 Do I have that right?

18 MR. RIEHLE: I believe that's correct, Your  
19 Honor.

20 THE COURT: Okay. So we're still here on the  
21 option agreement on the promissory note.

22 MR. RIEHLE: I think the Court's order denying  
23 it, the TRO, mooted, you know, the application that  
24 prevented them from signing. So I think that is mooted,  
25 Your Honor.

26 THE COURT: Okay. All right. So then we're  
27 here entirely on what Mr. Ashworth has called the redo.

28 MR. RIEHLE: Not accepting his

1 characterization, Your Honor, but Mr. Ashworth does  
2 sometimes have a way with words.

3 THE COURT: Again, help me here. Going back  
4 through my piles, I think this originated early this  
5 year in a ex-parte application to modify the January 2,  
6 2008, order set for February 14th and then continued  
7 several times. Is that still the operating document?

8 MR. RIEHLE: I believe it is, Your Honor.

9 THE COURT: All right.

10 MR. RIEHLE: With the overlay of the financial  
11 reconciliation.

12 THE COURT: Right. Okay.

13 All right. So we're all on that. We all  
14 understand why Mr. Riehle has asked to us be here this  
15 morning.

16 Okay. Mr. Ashworth?

17 MR. ASHWORTH: Yes. As a sort of a -- what do  
18 you call that? -- laundry list -- or housekeeping  
19 manner, is there any crossover -- is there any  
20 cross-relevance between what appears to be an accounting  
21 problem, which can be tried in October, with the  
22 discrete relief, essentially, redo, if you like,  
23 restoring XS Caffyn to its 4.12 rights, restoring Caffyn  
24 to its double votes, and the couple of other things that  
25 necessarily implicate that relief.

26 Is there a crossover? Can we separate those,  
27 or are you going to pre-try the accounting issues?

28 THE COURT: I am here to hear whatever

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

---oOo---

XET HOLDINGS,	)	
	)	
Plaintiff,	)	
	)	No. 1-07-CV-092388
vs.	)	
	)	
XS HOLDING,	)	
	)	
Defendant.	)	
<hr/>		
AND RELATED CROSS-ACTIONS.	)	
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I, Aura N. Clendenen, Official Reporter for the  
Superior Court of California, County of Santa Clara, do  
hereby certify:

That I was present at the time of the above  
proceedings; that I took down in machine shorthand notes  
all proceedings had and testimony given and thereafter  
transcribed with the aid of a computer; that the above  
and foregoing is a true, correct, and complete  
transcription of said shorthand notes and a true,  
correct and complete transcript of all proceedings had  
and testimony taken, to the best of my ability; that I  
am not an interested party to the action.

Dated: May 4, 2008

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Aura N. Clendenen, RPR, CSR No. 10080